

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Approval of a Pilot)	
Program Regarding Mercantile)	
Applications for Special Arrangements)	Case No. 10-0834-EL-POR
with Electric Utilities and Exemptions)	
from Energy Efficiency and Peak Demand)	
Reduction Riders)	
)	

**JOINT REPLY COMMENTS OF THE ENVIRONMENTAL LAW & POLICY CENTER,
THE OHIO ENVIRONMENTAL COUNCIL, THE SIERRA CLUB, AND
THE NATURAL RESOURCES DEFENSE COUNCIL**

INTRODUCTION

On November 16, 2012, the Attorney Examiner requested comments regarding the Mercantile Pilot Program (“Mercantile Program”) and the November 15 technical workshop in this case in order to assist Staff and the Commission in its evaluation of the program.¹ Several groups submitted initial comments on November 30.

As explained below, the Environmental Law & Policy Center (“ELPC”), the Ohio Environmental Council (“OEC”), the Sierra Club, and the Natural Resources Defense Council (“NRDC”), collectively “Environmental Advocates,” submit the following reply comments:

1. Use of current code or industry standard as the baseline for the replacement of failed equipment is a clear and objective method for measuring savings.
2. Use of the as-found method for failed equipment complicates the Mercantile Program and the application process.
3. Mercantile customers should have to contribute their fair share of Evaluation, Measurement and Verification (“EM&V”) costs.

¹ Case No. 10-0834, Attorney Examiner Entry (November 16, 2012).

COMMENTS

1. Use of current code or industry standard as the baseline for the replacement of failed equipment is a clear and objective method for measuring savings.

As explained in the Environmental Advocates' initial comments, the Commission should require energy savings to be measured using a baseline of current code or industry standard for the replacement of equipment after the end of its useful life. This method for measuring savings would be consistent with Ohio law, the Ohio Draft TRM, and the TRMs and mercantile programs of other states. Significantly, none of the other commenters have presented a single example of a state or program that utilizes the as-found method for the replacement of failed equipment. However, Industrial Energy Users-Ohio ("IEU"), Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company ("FirstEnergy"), and Dayton Power and Light Company ("DP&L") assert, without justification, that the current code or industry standard baseline is vague and unworkable.² This assertion is false for two reasons.

First, contrary to FirstEnergy's claim, a utility or mercantile customer measuring savings from the replacement of failed equipment would not have to "track each and every building code, statute and regulation on the federal, state, and political-subdivision levels within the EDU's certified territory."³ Instead, the utility can simply follow the Ohio Draft TRM. The TRM spells out the useful life and current code or industry standard baseline value for commercial and industrial equipment.⁴ For the replacement of equipment that may not be specifically included, the Ohio Draft TRM explains the protocols for setting the baseline and measuring savings.⁵

² Comments of IEU at 5; Comments of FirstEnergy at 7-8; Comments of DP&L at 2.

³ Comments of FirstEnergy at 7.

⁴ See Attachment B to Environmental Advocates' Initial Comments at 146-295.

⁵ *Id.* at 297-328.

Using current code or industry standard is a simple and established method for measuring savings from the replacement of failed equipment.

Second, the argument that using current code or industry standard is “unworkable” is entirely undermined by the fact that *all utilities already use this method in other contexts*. For all customer classes besides mercantile customers, the Commission requires a baseline of current code or industry standard for the replacement of failed equipment. Further, as the Ohio Power Company (“AEP”) conceded in its initial comments, the utilities use a baseline of “current codes and standards for new construction projects.”⁶

Not only does the opposition’s argument fail substantively, but the Commission should note that Duke Energy Ohio (“Duke”) agrees with the Environmental Advocates and recognizes that current code or industry standard is workable and proper. Duke concludes in its comments that “[i]n any new construction, major renovation, failed equipment replacement or aged equipment replacement, use of the as-found baseline is not appropriate.”⁷ As Duke explains, when a customer replaces equipment after the end of its useful life:

Only the efficiency of the action relative to code requirements or market standards is relevant. Thus, consistent with the standard to which utility offered programs are held, the appropriate baseline comparison in such situations is the code requirement or market standard applicable.”⁸

⁶ Comments of AEP at 4.

⁷ Comments of Duke at 3.

⁸ *Id.* Although agreeing with the Environmental Advocates that the as-found standard should be rejected for the replacement of failed equipment, Duke expresses concern that “a shifting baseline” from as-found to current code or industry standard “introduces operational challenges” that complicate the measuring process, but this concern is unfounded. As explained in our initial comments, the Environmental Advocates support use of the as-found method for the early retirement of functioning equipment. At the end of the prior equipment’s useful life, the baseline then shifts to current code or industry standard. The shifting baseline and savings calculation can be derived from the Ohio Draft TRM, which sets out the useful life of commercial and industrial equipment.

Duke's comments outline the only logical approach to this issue. If a customer merely replaces old equipment with the least efficient equipment then no one should get credit for that change.

2. Use of the as-found method for failed equipment complicates the Mercantile Program and the application process.

Contrary to the claims of some commenters, use of the current code or industry standard baseline would not complicate the Mercantile Program and the application process. In fact, the opposite is true—the adoption of current code or industry standard for the replacement of failed equipment would create consistency among the Commission's rules and reduce confusion in the measurement process for mercantile customers.

The current Mercantile Program sets up two standards for measuring a mercantile customer's energy savings rather than one. For purposes of a mercantile customer's eligibility for *incentives*, the Commission rejected the as-found method in situations involving the replacement of failed equipment and requires a baseline of current code or industry standard.⁹ By then allowing utilities to *count* mercantile savings toward benchmarks using the as-found method for failed equipment, the Commission creates dual standards that can only serve to complicate administration of the Mercantile Program. These multiple standards have created obvious confusion, which was noted by the independent statewide evaluator ("SWE") in its report to the Commission.¹⁰ AEP also discussed this confusion in its comments, explaining that, although it supports use of the as-found methodology, "it would be helpful to clarify the baseline determination and measurement requirements, particularly for end of useful life."¹¹ The Commission could alleviate this confusion and streamline the Mercantile Program measurement

⁹ Case No. 10-834-EL-POR, September 15, 2010 Entry at 6 (Chart).

¹⁰ SWE Report, Attachment C to Environmental Advocates' Initial Comments at 9.

¹¹ Comments of AEP at 4.

process by requiring a baseline of current code or industry standard for the replacement of failed equipment for both incentive eligibility and the counting of savings toward benchmarks.

3. Mercantile self-direct customers should pay their fair share of EM&V costs.

In addition to not counting savings when they replace failed equipment with the least efficient equipment on the market, mercantile customers should pay their fair share of the program administration and evaluation costs. Under the current Mercantile Program, mercantile customers who are exempt from the rider do not pay any portion of the EM&V costs associated with the program. Those costs are then transferred to other customers through the rider. AEP recognized this imbalance in its comments, concluding that it “seems reasonable to require customers who choose the exemption to pay their fair share of EM&V costs.”¹² According to Ms. Borgeson, more than half of the mercantile programs she reviewed have adopted an approach that requires exempt mercantile customers to contribute their proportional costs of program administration and EM&V.¹³ The approach described by Ms. Borgeson is a reasonable one that protects other customers from paying a disproportionate share of administration costs. The Environmental Advocates therefore agree with AEP’s recommendation that mercantile customers who choose to be exempt from the rider should pay their fair share toward EM&V and program administration.

CONCLUSION

Instead of utilizing the as-found method for the replacement of equipment after the end of its useful life, the Commission should consistently apply the Ohio Draft TRM, which requires savings to be measured against a baseline set by current code or industry standard. Current code or industry standard is a workable and objective method for measuring savings that would

¹² Comments of AEP at 2.

¹³ Attachment A to Environmental Advocates’ Initial Comments at Slides 20 and 27.

simplify the Mercantile Program and ensure that the program generates actual savings. The Environmental Advocates appreciate the opportunity to submit these comments and look forward to working with Staff and the Commission on these issues going forward.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Joint Reply Comments* submitted on behalf of the Environmental Law & Policy Center, Ohio Environmental Council, Sierra Club, and Natural Resources Defense Council was served by electronic mail, upon the following Parties of Record, this 7th day of December, 2012.

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Summary: Reply Comments of the Environmental Law & Policy Center, Ohio Environmental Council, Sierra Club, and Natural Resources Defense Council electronically filed by Mr. Nicholas A. McDaniel on behalf of Environmental Law and Policy Center and Ohio Environmental Council and Natural Resources Defense Council and Sierra Club